



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 1, 1955

Senator Abraham Kazen, Jr., Chairman
Committee on Criminal Jurisprudence
State Senate, 54th Legislature
Capitol Station
Austin, Texas

Opinion No. MS-191

Re: Constitutionality of
House Bill 290, 54th
Legislature

Dear Senator Kazen:

You have asked for our opinion as to the constitutionality of House Bill 290 with regard to whether the Legislature has the authority to enable a county official to administer granting of earned commutation of a jail sentence in misdemeanor cases as set out in the proposed Act. The county official designated in House Bill 290 is the Sheriff in charge.

The Legislature has the power to authorize by statute the reduction of sentences of convicts as a reward for their good conduct and behavior. Commutation must be earned, whereas clemency is extended as an act of grace by authorities having such power under the Constitution. *Ex parte Anderson*, 149 Tex. Crim. 139, 192 S.W.2d 280 (1946).

We find no constitutional provisions which would prohibit a county official from administering this proposed Act in regard to earned commutation.

Article 5116 of Vernon's Civil Statutes provides:

"Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners. The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail."

The sheriff, then, would be the proper county official to administer this Act.

Senator Abraham Kazen, Jr., page 2 (MS-191)

It is, therefore, our opinion that House Bill 290 does not violate the Texas Constitution with regard to the above question.

APPROVED:

J. C. Davis, Jr.
Reviewer

J. A. Amis, Jr.
Reviewer


Enos T. Jones
Reviewer

Robert S. Trotti
First Assistant

ROF/rt

Yours very truly,

JOHN BEN SHEPPERD
ATTORNEY GENERAL OF TEXAS

By 
Robert O. Fagg
Assistant